IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 754 of 2000

in

SPECIAL CIVIL APPLICATION NO 7656 of 1999

with

CIVIL APPLICATION NO. 10422 OF 2000

AND

LETTERS PATENT APPEAL No 121 of 2000

in

SPECIAL CIVIL APPLICATION NO 6831 of 2000

with

CIVIL APPLICATION NO. 2499 OF 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VELJIBHAI D MOCHI

Versus

MS UNIVERSITY

Appearance:

MS SONA SAGAR for Appellant

MR HARDIK RAVAL for Respondent

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE P.B.MAJMUDAR

Date of decision:04/04/2001

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. These two Letters Patent Appeals both filed by the appellant Shri Veljibhai D. Mochi against Maharaja Sayajirao University, Vadodara are being decided by this common judgment and order, as the subject matter of dispute, in Special Civil Application No. 7656 of 1999 preferred by the appellant and Special Civil Application No. 6831 of 1999 preferred by the University leading to these two Letters Patent Appeals, is common.

#. The issue concerns selection of the appellant by the Selection Committee for direct recruitment to the post advertised of Deputy Registrar in the University service, but the refusal of the Syndicate of the University to make the appointment and consequent action of readvertisement of the post with additional qualifications.

#. The University advertised under Notification No. ADE/1 of 1998-99 invition for applications on or before 8-5-1998 for various posts of the University, including two posts of Deputy Registrar in the pay scale of Rs. 10,000-15,200. Out of the two posts advertised, one was reserved for Scheduled Tribe candidate and one was available for open competition. The qualifications prescribed were:

(i) a post-graduate degree with at least 55% of marks or equivalent grade or Masters degree with LL.B. of any University.

AND

(ii) atleast 8 years experience as a Lecturer in a

College or a University with experience in Educational Administration.

OR

(iii) xx xx xx xx

OR

(iv) 8 years administrative experience in the field of general Administration/conduct of Examinations/Academic Administration of which 5 years should be Assistant Registrar or equivalent in the Educational Institutions of Higher Learning.

#. It is not in dispute that the appellant fulfils the prescribed educational and experience qualifications for the post. The Selection Committee was constituted by the University for making recommendations after selections for appointments. It is also not in dispute that the Selection Committee is consisted of members, particularly, the Vice Chancellor, the Dean of the Faculty, the Head of the Department and four persons having expert knowledge of the subject, as provided for appointment of a Professor or Reader under Section 48 of the Maharaja Sayajirao University of Vadodara Act, 1949. Considering the academic record and interview of the candidates, by its recommendation made on 11.11.1998, the appellant was the only candidate recommended for appointment for the one open post. The recommendations of the Selection Committee were placed before the Syndicate of the University. By the impugned Resolution dated 26-11-1998 the Syndicate did not accept the recommendation and directed that the post be readvertised. The Resolution of the Syndicate does not contain any reasons and reads thus:-

"Consideration of the recommendation of the Selection Committee appointed by the Vice-Chancellor as authorised under S.R. No. 33 dated 18-4-1998 held in the University Office on Wednesday the 11th November, 1998 to select candidate for the post of Dy. Registrar in the University Office.

Resolved that the recommendation of the Selection Committee held on 11-11-1998 to recommend candidate for the post of Dy. Registrar in the University Office be not accepted and that the post be readvertised."

#. Aggrieved by the refusal of the Syndicate to make the appointment on the basis of the select list, the appellant approached the Gujarat University Services Tribunal. The Tribunal, after giving a detailed hearing

to the appellant and the University, held that the decision of the Syndicate of the University does not disclose the reasons for non-acceptance of the recommendation of the Selection Committee. The Tribunal, therefore, partly allowed the Petition of the appellant and directed the Syndicate of the University to reconsider the recommendation of the Selection Committee and if the decision is against the appellant, reasons may be recorded. It is also directed that after adverse decision, if any, of the Syndicate, the post shall not be filled for a period of ten days after such decision.

#. Aggrieved by the above directions contained in the order of the Tribunal dated 12-7-1999, the University filed Special Civil Application No. 6831 of 1999 which was allowed by the learned Single Judge (Coram : R.R.Tripathi, J) by order dated 26-2-2001 and the same has given rise to Letters Patent Appeal No. 121 of 2001 by the present appellant. In the Special Civil Application No. 6831 of 1999 filed by the University, learned Single Judge Justice R.R. Tripathi set aside the order of the Tribunal, mainly on the ground that there is no legal obligation for the Syndicate to record the reasons in its proceedings for not accepting the recommendations of the Selection Committee.

#. Since before the Tribunal and before the learned Single Judge in Special Civil Application No. 6831 of 1999, one of the grounds urged by the University was lack of jurisdiction of the Tribunal to entertain the grievance against refusal of appointment pursuant to selection, the appellant, by an abundant caution, also preferred a substantive Writ Petition, being Special Civil Application No. 7656 of 1999, which has given rise to the Letters Patent Appeal No. 754 of 2000. By the Special Civil Application No. 7656 of 1999, the appellant has challenged the issuance of fresh advertisement by the University for the vacant post of Deputy Registrar. In the fresh advertisement issued for the post, the educational qualifications have been changed in view of the University Grants Commission (U.G.C.) recommending higher pay scale for the post. In the fresh advertisement (Annexure F - SCA 7656/99) issued on 10-8-1999, the scale of pay of the post shown is same as earlier advertised, i.e., Rs.10,000-325-15,200, but the qualifications prescribed are higher. The higher qualification prescribed are -

"(1) A Master's Degree with at least 55% of the marks or its equivalent grade of B in UGC seven point scale.

(2) Five years experience as a Lecturer in a College or a University with experience in educational administration, Or, comparable experience in Research Establishment and/or other institutions of higher education, Or, Five years of administrative experience as Assistant Registrar or in an equivalent post."

#. Admittedly, the petitioner, having served for more than ten years as Office Superintendent in the University, fulfils the experience qualification, but as per the new advertisement, since he does not hold a Masters Degree with 55% of marks, he lacks in educational qualifications. He is, therefore, not even eligible to apply for the post. It is thus clear that since as per the fresh advertisement for the same post issued on 10-8-1999, the petitioner does not possess the minimum prescribed education qualifications, he is not in a position to apply for the post. The substantive Petition SCA 7656/99 filed by the petitioner after the order of the Gujarat University Services Tribunal and issuance of fresh advertisement for the post was directed to be linked for hearing with SCA 6831/99 filed by the University against the same order of the Tribunal. Unfortunately, for the appellant, on the day when the case was called for hearing, because of sick note filed by the counsel for the University, the counsel for the appellant remained absent. The learned Single Judge by order dated 23-2-2000 (which is the subject matter of LPA 754/00) dismissed the case of the appellant, unmindful of the fact that it was to be heard with the connected SCA 6831/99 filed by the University. It is in the above circumstances, that in the two Special Civil Applications, two judgements and orders dated 23-2-2000 and 26-2-2001 came to be passed by two different learned Single Judges giving rise to these two Letters Patent Appeals by the appellant.

#. We do not consider it necessary to go into the question of the jurisdiction of the Gujarat University Services Tribunal and the correctness of the order passed by it, because in our opinion, the entire matter is open before us for consideration, as a result of substantive Writ Petition (SCA 7656/99) filed by the appellant, against the refusal of the Syndicate of the University to appoint him on the post of Deputy Registrar on the basis of the select list prepared by the Selection Committee.

##. Learned counsel appearing for the appellant contends that once the post of Deputy Registrar was advertised

with particular requisite educational qualifications and experience, the Syndicate of the University could not have arbitrarily taken a decision not to act upon the recommendation of the Selection Committee and decide to readvertise the post with higher qualifications.

##. Strong reliance has been placed on the decision of the Supreme Court in the case of Km. Neelima Misra v. Dr. Harinder Kaur Paintal and others AIR 1990 SC 1402, the Division Bench decision of the Gujarat High Court in the case of Gujarat State Civil Supplies Corporation Ltd. v. Dashrathlal L. Patel XXXIV(2) 1993(2) GLR 1676 and the decision of Supreme Court in R.S. Mittal v. Union of India reported in 1995(2) SLR 437.

##. Learned counsel Shri Hardik Raval appearing for the University in supporting the action of the Syndicate of the University submits that the decision of the Syndicate is an administrative decision taken by the Members of the Syndicate by casting vote. There is no legal obligation to record the reasons for decision or resolution of the Syndicate. It is submitted that decision of the Syndicate cannot be held to be arbitrary. The justification shown for not accepting the recommendation of the Selection Committee is that the University decided to accept the recommendations of Pay Anomaly Committee headed by Justice N.B. Patel, (as he then was) to implement the UGC pay scales by prescribing higher qualifications for the post of Deputy Registrar in view of the fact that higher pay scales were recommended for the post by the UGC. The stand taken on behalf of the University is that as the post of Deputy Registrar was decided to be upgraded with higher UGC pay scale, a decision was taken by the University not to make appointment on the selection held pursuant to the earlier advertisement. It decided to readvertise the post with higher qualifications in view of fixation of higher pay scale for the post.

##. On behalf of the University it is also contended that mere inclusion of the name of a candidate in the select list creates no indefeasible right of appointment in his favour, and on fair and reasonable grounds, the appointing Authority could decline to operate the select list. Reliance is placed on a Single Bench decision of this Court in the case of Rathodbhai J. Dungarbhai and Others v. State of Gujarat and Others 1995(1) GLH 180 for the proposition that after the selections, the Syndicate could refuse to make appointment in view of prescription of higher qualifications and higher scale of pay for the post. Strong reliance has been placed on the

decisions of Supreme Court in the case of State of M.P. and Others v. Raghuveer Singh Yadav and Others (1994) 6 SCC 151, Rajasthan Public Service Commission v. Chanan Ram and Another AIR 1998 SC 2251 and S. Prakash and Another v. K.M. Kurian and Others (1999) 5 SC 624.

##. We have given our thoughtful consideration to the submissions made by the counsel appearing for the appellant and the counsel appearing for the University. We have also carefully considered the decisions cited at the Bar. There can be no quarrel with the proposition that a candidate, only by inclusion of his name in the select list, even at the top, can have no enforceable right to claim appointment. The appointing Authority, on reasonable and fair grounds, can refuse to act on the recommendations of the Selection Committee, and decide not to operate the select list. The decision of the Syndicate in not implementing the recommendation of the Selection Committee is also a purely administrative decision and no obligation of recording reasons can be inferred in such an administrative decision. In our considered opinion, however, the Syndicate being a Statutory Authority and State under Article 12 of the Constitution of India, is obliged to satisfy this Court, when its action is challenged, that on some reasonable and fair ground it had decided not to act on the recommendations of the Selection Committee. The Rule of fair play applies to an administrative decision of a Statutory Authority, particularly, while it is dealing with such important functions of public appointments. This requirement to act reasonably and fairly obligates the University to justify its action, when challenged in court, that in taking its decision in the manner it did, it did not act arbitrarily and on extraneous considerations, and that it acted on reasonable and fair grounds in the best interest of the university. The University acting administratively is under no statutory duty to give reasons. This being the law, failure to give reasons in and of itself would not invalidate its decision, but once decision is challenged in Court, it has obligation to disclose the reasons, to satisfy the Court that the decision was taken fairly and not arbitrarily, that it was taken in the interest of the Institution and is not in any manner unjust or unfair. Judicial review permits that this Court can insist on the University, as a decision maker, as its duty of candour to the Court, to reveal why the challenged decision was made. That there is no duty in law for the University to record reasons in making or refusing appointments on the recommendations of the Selection Committee, but that does not absolve the University from its duty to disclose

reasons for its action when the action is challenged in Court of law. See the following observations of the Supreme Court in the case of Km. Neelima Misra on which reliance has been placed on behalf of the appellant:-

"The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi judicial exercise of power is liable to be quashed being violative of Art. 14 of the Constitution. As stated in E.P. Royapa v. State of Tamil Nadu, (1974) 2 SCR 348:(AIR 1974 SC 555) "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch." The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive, or quasi-judicial. See Mrs. Maneka Gandhi v. Union of India, (1978) 1 SCC 248 at pp. 283-84: (AIR 1978 SC 597 at P. 624); Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 at pp. 740-41: (AIR 1981 SC 487 at Pp. 498-499); Som Raj v. State of Haryana, (1990) 1 JT 286 at p. 290: (AIR 1990 SC 1176 at P. 1180)."

##. Applying the above test of reasonableness and fairness to the administrative decision of the Syndicate of the University, we have to examine whether the Resolution impugned by the appellant in these Appeals is justified. The Counsel for the University was repeatedly granted time to produce necessary orders and Resolution of the University which led to the decision of the Syndicate not to act on the select list in which appellant's name alone figured and to readvertise the post prescribing higher qualifications. What is now disclosed to the Court is the Notification revising the pay scales at par with UGC scales for appointment of teachers in Universities and Colleges published in the year 1998. As stated in the affidavit in reply filed in LPA 745/00 in SCA 7656/99, the University approached the Government for permission to implement the UGC higher pay scales for various posts in the University. The Government of Gujarat constituted Pay Anomaly Committee

under the Chairmanship of Justice N.B. Patel (as he then was) to recommend what amendments to the University Recruitment Rules and Procedure are required for implementing the UGC pay scales for various posts in the University. Letter of Vice Chancellor dated 26-5-1999 has been placed before us in the course of hearing. The contents of that letter of the Vice Chancellor dated 26-5-1999 addressed to Justice N.B. Patel, Chairman of Pay Anomaly Committee show that the University accepted the qualifications recommended by the UGC for implementing higher pay scales for the various posts. This decision of the University accepting the prescribed qualifications of UGC for grant of higher scale of pay to the various posts in University was conveyed by letter dated 26-5-1999. From these disclosures made by the University, it is obvious that in the first Advertisement (Annexure A) the date on which applications were invited for the post, i.e., 8-5-1998, the date on which the Selection Committee made the selections, i.e., 11-11-1998 and the date, i.e., 26-11-1998 when the Syndicate refused to make appointment, there was no decision in existence of the University to accept the report of Pay Anomaly Committee and prescribe higher qualifications for the post in implementation of higher scales of pay recommended by the UGC. This decision of the University to accept the report of Pay Anomaly Committee to implement the UGC scales with higher qualifications for different posts was conveyed by the Vice Chancellor by its letter dated 26-5-1999, that is much after the whole selection procedure pursuant to the first Advertisement was already over.

##. On the date when the Syndicate refused to act on the recommendations of the Selection Committee, i.e., 26-11-1998, there was neither a decision to act on the report of the Pay Anomaly Committee nor implementation of UGC scales. The justification, now sought to be shown as fair and reasonable on the basis of report of Pay Anomaly Committee and recommendations of UGC, appears to us to be clearly an after thought and an attempt to support somehow the arbitrary action of the Syndicate.

##. The decisions of the Supreme Court on which reliance has been placed on behalf of the University are distinguishable. In the case of Raghuveer Singh Yadav (supra), after the selection, examination and declaration of results, but before appointments, statutory recruitment rules framed under Article 309 of the Constitution of India came to be amended, and it is because of these statutory changes in the recruitment rules that the Supreme Court upheld the action of the

Government in not giving effect to the select list prepared pursuant to an advertisement and selection held on the basis of unamended rules. Similar is the position in the case of Chanan Ram (supra). In that case, after advertisement of the post, the posts themselves were abolished by creation of new posts under Rajasthan State Agricultural Marketing Service Rules. The Supreme Court, therefore, held that the candidates can claim no right of appointment on the basis of their selection pursuant to the advertisement of the posts which no longer existed on creation of new posts. The Supreme court has clarified the legal position in S. Prakash (supra) stating that where during pendency of recruitment process recruitment rules are amended, the selected candidates can claim no right to seek appointment to the post, merely on the basis of their selection under pre-amended rules. All the decisions relied on behalf of the University are, therefore, distinguishable. In the course of selection procedure which is completed only after appointments are made or refused, if there is an amendment in the recruitment policy or the recruitment rules, the appointing Authority can be held to be justified in refusing to make appointment on the selections already made. That, however, is not the position in the instant case. On the date of first advertisement, when applications were invited from candidates on 8-5-1998, the report of the Pay Anomaly Committee or UGC scales with higher qualifications was not accepted by the University. That was the position when Selection Committee met on 11-11-1998 and recommended the appellant alone for the post of Deputy Registrar. There was absolutely no change in the policy of recruitment when Syndicate on 26-11-1998, by impugned Resolution (Annexure C), refused to accept the recommendations of the Selection Committee and decided to readvertise the posts. It may be true that when Syndicate met on 26-11-1998, the deliberations in the University with several University Authorities including the Pay Anomaly Committee were in progress, for giving effect to the revised scale of pay of UGC with higher qualifications. But the UGC scales with higher qualifications were accepted and brought into force after 26-5-1999, as is disclosed from the contents of the letter of Vice Chancellor to the Pay Anomaly Committee. The Syndicate, therefore, in its meeting held on 26-11-1998, while rejecting the recommendations of the Selection Committee and deciding to readvertise the posts, cannot be held to have either acted fairly or reasonably. The appellant's candidature has not been accepted on any justifiable ground. The stand now taken by the University is clearly an after thought, as it could not have been the stand available to the

University, when Syndicate met on 26-11-1998. The decision of the Syndicate has placed the petitioner in an irretrievable situation. He is a serving employee of the University on a lower post. He applied for recruitment against one available post of Deputy Registrar which was open to all. He was a Schedule Caste candidate, but since there was no post reserved for Scheduled Caste, he had to apply for the open post available to other candidates, against which, out of several candidates within the zone of consideration, the Selection Committee recommended his name only. The Syndicate appears to have acted arbitrarily and on extraneous grounds in rejecting the recommendation of the Selection Committee. As held by us above, the stand of the University is an after thought based on subsequent report of the Pay Anomaly Committee and the decision of the University to implement UGC scales by prescribing higher qualifications for the post in question. What is relevant and interesting to note is that even in the fresh advertisement of the post issued in the year 1999, the same two posts of Deputy Registrar (one reserved for Scheduled Cast and one open) have been advertised in the same pre-UGC scales, i.e., Rs. 10,000-325-15,200. It has not been readvertised with UGC scale of Rs. 12,000-18,200. In the fresh advertisement, however, higher educational qualifications of Masters Degree with atleast 55% of marks or its equivalent grade of B in the UGC seven point scale has been laid down as qualification. It appears that the post was readvertised with higher qualifications only to deny chance of recruitment for the post of Deputy Registrar to the appellant, who earlier faced the selection and was recommended for appointment by the Selection Committee.

##. As has been held by us above, the candidate recommended by the Selection Committee and included in the select list cannot, as of right, claim any appointment. But, he can certainly claim due consideration for appointment on the basis of his inclusion in the select list. He can also make a grievance against unfair and unreasonable stand or action of the appointing Authority in not giving effect to the select list. Not a right of appointment, but a right of being considered for appointment on the basis of select list, fairly and reasonably, is the right which flows from Articles 14 and 16 of the Constitution of India. We rely on the following observations of the Supreme Court in the case of R.S. Mittal (supra):

"It is no doubt correct that a person on the select-panel has no vested right to be appointed

> to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

##. In the case in hand, on the date of issuance of first advertisement and the selection as also the consideration of the matter for appointment by the Syndicate, the post carried same pay scale and same qualifications. Prescription of higher educational qualifications for the post and implementation of revised UGC scales of pay came into force much later after May 1999. The advertisements issued for the posts on the existing recruitment policy of the University had to be filled on the then existing situation. The Syndicate has not recorded any reasons in its Resolution, as it was not obliged to do so, but the reasons for rejecting the candidature of the appellant, as is sought to be disclosed, is clearly an after thought. The Resolution of the Syndicate, therefore, is neither fair nor reasonable and has to be quashed.

##. As a result of the aforesaid discussion, the Letters Patent Appeals succeed. The two judgments and orders of the learned Single Judges dated 23-2-2000 in SCA 7656/99 and 26-2-2001 in SCA 6831/99 are hereby set aside for different grounds discussed above. The impugned Resolution of the Syndicate dated 26-11-1998 rejecting the recommendation of the Selection Committee in favour of the petitioner and fresh advertisement of the post pursuant thereto of one post of Deputy Registrar for general candidates are quashed. The respondent University is directed to reconsider the recommendation

of the Selection Committee dated 18-4-1998 in favour of the petitioner for the post of Deputy Registrar pursuant to his selection under the advertisement (Annexure A). As held above, the Syndicate is directed to reconsider the claim of appointment of the appellant on the basis of his position in the select list within a period of 8 weeks, without in any manner influenced by extraneous considerations e.g. that subsequently the post of Deputy Registrar has been upgraded with higher scale of pay and higher qualifications.

As a result of the success of the Letters Patent Appeals, the appellant will also be entitled to costs from the respondent which are quantified to Rs. 2000/-.

(D.M. DHARMADHIKARI, C.J.)

(P.B. MAJMUDAR, J)

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